S.B. CIVIL WRIT PETITION NO.4154/1992
(Ratan Singh Gehlot Vs. Union of India & ors.)

Date of Order :: 30th May 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Anjay Kothari for the petitioner
Mr.Vivek Shrimali for Mr.Sangeet Lodha for the respondent-Department.

This writ petition has been filed by the petitioner challenging the impugned notices dated 26.03.1992 (Annex.8, Annex.9 & Annex.10) issued under Section 148 of the Income Tax Act, 1961 ('the Act') by the Assessing Officer proposing to re-assess his income for the assessment years 1981-82, 1983-84 and 1984-85 respectively.

In nutshell the case of the petitioner is that after search was conducted at his residence from 21.01.1987 to 24.01.1987 completed assessments on the basis of returns of income filed by him were re-opened under Section 148 of the Act and the assessment proceedings commenced de novo. According to the petitioner, in order to buy peace and to put an end to litigation, he agreed to assessment on certain lines including some amount towards his income without prejudice to his rights to contend otherwise and, accordingly, he filed settlement petition and revised returns; that on the basis of such agreed lines, assessments were framed against the

petitioner; and that on the basis of such agreed assessments, the petitioner paid the tax. The petitioner has raised grievance that the Department attempted to re-open even these completed re-assessment proceedings by taking recourse to Section 263 of the Act for the assessment years 1982-83, 1985-86 and 1986-87; whereas in relation to the assessment years 1981-82, 1983-84 and 1984-85 (subject matter of present writ petition) the Assessing Officer who had earlier issued notices under Section 148 of the Act and has completed the agreed assessment proceedings, issued fresh notices under Section 148 of the Act. The petitioner has contended against issuance of such notices in this writ petition essentially on two grounds, namely: (i) that such notices were issued by the Assessing Officer merely on change of opinion and the attempted proceedings were nothing but review of the concluded proceedings not permissible by law; and (ii) that the petitioner has not been supplied with reasons for issuance of such notices. While entertaining this writ petition on 11.08.1992, by way of interim order this Court stayed further proceedings in pursuance of the impugned notices; and the petition was admitted on 08.09.1995 for final hearing.

Though earlier the respondents took the stand in their reply that reasons were not required to be supplied to the petitioner, however, perusal of record shows that on

19.03.2001 this Court directed the respondents to furnish a copy of reasons recorded before issuing impugned notices under Section 148 of the Act and so also the copy of reasons recorded while issuing earlier notices under Section 148 for the relevant assessment years.

The parties are ad idem that by way of application filed before this Court later, the Department has supplied the reasons to the petitioner in relation to the earlier re-opening and so also the present notices under Section 148 of the Act.

During the course of hearing, the petitioner has also pointed out that in relation to assessment years 1985-86, 1986-87 and 1982-83, the order passed by the Commissioner of Income Tax under Section 263 of the Act has been set aside by the Income Tax Appellate Tribunal by its common order dated 13.02.2004 passed in IT Appeals Nos.23, 24 and 25/JU/04.

The matter was heard earlier; and today learned counsel for the parties were heard further. During the course of submissions, learned counsel Mr.Vivek Shrimali appearing for the Department fairly submitted that with the petitioner having been supplied with all the reasons in relation to notices issued to him, it is open for him to file reply to the notices and to proceed before the Assessing Officer in accordance with law. Learned counsel submitted that no cause survives in this

petition seeking issuance of a writ for quashing of notices. Learned counsel referred to the decision of Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and others: 259 ITR 19 and that of a Division Bench of this Court in Asstt. Commissioner of Income Tax, Circle Chittorgarh and others Vs. Banswara Syntex Ltd.: 2005(1) WLC 87.

Learned counsel Mr.Anjay Kothari appearing for the petitioner in equal fairness submitted that though the petitioner seeks to question even the very authority with the Assessing Officer to issue repeat notices under Section 148 of the Act after re-assessment had earlier been completed on agreed terms and that the case is nothing but of mere change of opinion; but having regard to the reasons supplied by the Department and the proper course envisaged by the said decisions of the Hon'ble Supreme Court and this Court, the petitioner shall stand advised not to proceed this writ petition any further and to withdraw the same keeping intact his rights to file all his objections before the Assessing Officer for decision by way of a speaking order before taking up of any further proceedings towards re-assessment; and to take recourse to other remedies, if so required, in accordance with law.

The submissions made by learned counsel for the parties, more or less ad idem, appear to be in accord with the law declared by the Hon'ble Supreme Court and followed by the Division Bench of this Court. The Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (supra) has held,-

> "We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under section 148 of the Income-tax Act is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."

Having regard to the facts and circumstances of the case, the subsequent developments, and the stand taken by learned counsel for the parties, it appears appropriate that instead of proceeding further with the matter in this writ petition, the petitioner be granted liberty to withdraw this writ petition as prayed; and be permitted to file all his objections within 30 days from today before the Assessing Officer who

shall, obviously, be required to decide the same by speaking order as per the law declared by the Hon'ble Supreme Court.

It may be clarified that though in the ordinary course, the petitioner would have been asked to adopt the path of filing return in response to the notices and to ask for furnishing of reasons and then, on receiving of reasons, to file objections. However, in the circumstances of the present case wherein by an earlier order dated 11.08.1992 this Court has stayed further proceedings in pursuance of impugned notices; and thereafter, by order dated 19.03.2001 this Court has already directed the Department to supply the reasons; and the Department, in pursuance of the said directions, has already supplied the reasons, it appears appropriate and in the fitness of things that upon the petitioner filing his objection within 30 days from today, the Assessing Officer should decide the same by speaking order before proceeding further in the matter.

Subject to observations aforesaid, the writ petition is dismissed as withdrawn. No costs.

(DINESH MAHESHWARI), J.

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